

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

RICHARD V. HAYES,

Plaintiff(s)

vs.

CAPTAIN BOST/BOSS,

Defendant(s)

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Case Number: 1:05-cv-00746

Senior District Judge S. Arthur Spiegel

JUDGMENT IN A CIVIL CASE

Decision by Court: This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED

. . . Plaintiff's motion to dismiss (doc. 5) is **GRANTED**. This matter is hereby dismissed without prejudice. However, plaintiff's request for a waiver of fees and costs is **DENIED**. Plaintiff must still be assessed the \$250.00 filing fee for bringing this action. In accordance with section 804(a)(3) of the Prison Litigation Reform Act of 1995, 28 U.S.C. § 1915(b)(1), plaintiff must pay an initial partial filing fee of 20 percent of the greater of the average monthly deposits to his prison account or the average monthly balance in his account for the six month period immediately preceding the filing of the complaint. After payment of the initial partial filing fee, plaintiff is further required to make monthly payments of 20 percent of the preceding month's income credited to his prison account until he pays the full amount of the filing fee. 28 U.S.C. § 1915(b)(2). The custodian of plaintiff's inmate trust fund account at the institution where he now resides is directed to calculate, as an initial partial payment, twenty percent (20%) of the greater of: (a) the average monthly deposits to the inmate trust account; or (b) the average monthly balance in the inmate trust account, for the six (6) months immediately preceding November 18, 2005. The custodian is ORDERED to complete and to submit to the Clerk of Court the attached form showing his calculation of the initial partial filing fee. The custodian is further ORDERED to forward from plaintiff's prison account to the Clerk of Court the initial partial filing fee, as funds become available in plaintiff's account until the initial filing fee is paid. Even if the account is under ten dollars (\$10.00), the custodian must still forward payments to the Clerk of Court to pay the initial filing fee. After full payment of the initial partial filing fee, the custodian shall forward to the Clerk of Court located in Cincinnati, Ohio monthly payments of twenty percent (20%) of plaintiff's preceding monthly income credited to his prison account, but only when the amount in the account exceeds ten dollars (\$10.00), until the full fee of two hundred and fifty dollars (\$250.00) has been paid to the Clerk of the Court. The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that for the foregoing reasons an appeal of this Order would not be taken in good faith.

12/8/05

James Bonini, Clerk

s/Kevin Moser

Deputy Clerk